

116TH CONGRESS  
1ST SESSION

# S. 1847

To require group health plans and group or individual health insurance coverage to provide coverage for over-the-counter contraceptives.

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## IN THE SENATE OF THE UNITED STATES

JUNE 13, 2019

Mrs. MURRAY (for herself, Mrs. SHAHEEN, Mr. BOOKER, Ms. BALDWIN, Mr. BROWN, Mr. LEAHY, Mr. REED, Mrs. FEINSTEIN, Mr. BLUMENTHAL, Mr. KAINE, Mr. SANDERS, Ms. HIRONO, Ms. DUCKWORTH, Mr. MERKLEY, Ms. WARREN, Ms. CANTWELL, Ms. HASSAN, Mr. MENENDEZ, Mr. MARKEY, Mr. PETERS, Mr. WYDEN, Ms. KLOBUCHAR, Mr. BENNET, Ms. STABENOW, Ms. HARRIS, Mr. VAN HOLLEN, Mrs. GILLIBRAND, and Ms. SMITH) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To require group health plans and group or individual health insurance coverage to provide coverage for over-the-counter contraceptives.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Affordability is Access  
5 Act”.

1 **SEC. 2. PURPOSE.**

2       The purpose of this Act is to ensure timely access  
3 to affordable birth control by requiring coverage without  
4 cost-sharing for oral birth control for routine, daily use  
5 that is approved by, or otherwise legally marketed under  
6 regulation by, the Food and Drug Administration for use  
7 by women without a prescription.

8 **SEC. 3. FINDINGS.**

9       The Senate finds the following:

10           (1) Birth control is critical health care that al-  
11 most all women will use at some point in their life-  
12 times.

13           (2) Access to the full range of reproductive  
14 health care, including birth control coverage as guar-  
15 anteed under Federal law, provides women with the  
16 opportunity to lead healthy lives and get the care  
17 they need to reach their goals.

18           (3) Family planning has well-documented  
19 health benefits for women, newborns, families, and  
20 communities and can lower the risk of harm to ma-  
21 ternal and infant health.

22           (4) An estimated 66,000,000 women of repro-  
23 ductive age (ages 15 through 44) live in the United  
24 States, of which nearly 70 percent are at risk of  
25 having an unintended pregnancy. Sixty percent of  
26 women of reproductive age are using a contraceptive

1 method and 10 percent of women at risk for unin-  
2 tended pregnancy are not using contraception. The  
3 rates of non-use of contraception are highest among  
4 those between 15 and 19 years old.

5 (5) The birth control benefit enacted under the  
6 Patient Protection and Affordable Care Act (Public  
7 Law 111–148) has been a crucial step forward in  
8 advancing access to birth control and has helped en-  
9 sure nearly 62,800,000 women have the power to de-  
10 cide for themselves if and when to start a family.

11 (6) Despite legal requirements for birth control  
12 coverage and access to services, gaps remain for mil-  
13 lions of women. A national survey found that 1 in  
14 3 women have struggled to afford birth control at  
15 some point in their lives, and as a result, have used  
16 birth control inconsistently. Access to birth control is  
17 particularly difficult for women who live in contra-  
18 ceptive deserts and lack reasonable access to a  
19 health center that offers the full range of contracep-  
20 tive methods.

21 (7) Health disparities persist among low-income  
22 women, women of color, and women who lack access  
23 to health coverage and health care providers.

24 (8) There are numerous social and economic  
25 barriers that make it harder to access birth control,

1 including rising income and wealth inequality, gaps  
 2 in insurance coverage and challenges accessing  
 3 health providers.

4 (9) Leading health experts support over-the-  
 5 counter birth control pills.

6 **SEC. 4. SENSE OF THE SENATE.**

7 It is the sense of the Senate that—

8 (1) in order to increase women’s access to oral  
 9 birth control, such birth control must be both easier  
 10 to obtain and affordable and, to make such birth  
 11 control either easier to obtain or more affordable,  
 12 but not both, is to leave unacceptable barriers in  
 13 place for women;

14 (2) it is imperative that the entities that re-  
 15 search and develop oral birth control and whose  
 16 medical and scientific experts have developed clinical  
 17 and other evidence that oral birth control for rou-  
 18 tine, daily use is safe and effective for women when  
 19 sold without a prescription, apply to the Food and  
 20 Drug Administration for review and approval for  
 21 sale of such birth control without a prescription;

22 (3) upon the receipt of such an application, the  
 23 Food and Drug Administration should determine  
 24 whether the oral birth control meets the rigorous  
 25 safety, efficacy, and quality standards for over-the-

1 counter use under the Federal Food, Drug, and Cos-  
2 metic Act (21 U.S.C. 301 et seq.), and if the prod-  
3 uct meets those standards, the Food and Drug Ad-  
4 ministration should approve the application without  
5 delay; and

6 (4) if and when the Food and Drug Adminis-  
7 tration approves an oral birth control that is avail-  
8 able over-the-counter, such birth control should be  
9 covered by health insurance, without a prescription  
10 and without cost-sharing.

11 **SEC. 5. CLARIFYING COVERAGE REQUIREMENTS.**

12 The Secretaries of Health and Human Services,  
13 Labor, and the Treasury shall clarify that coverage of con-  
14 traceptives pursuant to section 2713(a)(4) of the Public  
15 Health Service Act (42 U.S.C. 300gg–13(a)(4)) includes  
16 coverage of over-the-counter contraceptive methods ap-  
17 proved by the Food and Drug Administration, even if the  
18 enrollee does not have a prescription for the contraceptive.

19 **SEC. 6. RULES OF CONSTRUCTION.**

20 (a) NON-INTERFERENCE WITH FDA REGULA-  
21 TION.—Nothing in this Act shall be construed to modify  
22 or interfere with Food and Drug Administration processes  
23 to review or approve, or otherwise determine the safety  
24 and efficacy of, and make available, non-prescription  
25 drugs or devices, modify or interfere with the scientific

1 and medical considerations of the Food and Drug Admin-  
 2 istration, or alter any other authority of the Food and  
 3 Drug Administration.

4 (b) NON-PREEMPTION.—Nothing in this Act pre-  
 5 empts any provision of Federal or State law to the extent  
 6 that such Federal or State law provides protections for  
 7 consumers that are greater than the protections provided  
 8 for in this Act.

9 **SEC. 7. DUTIES OF RETAILERS TO ENSURE ACCESS TO**  
 10 **ORAL BIRTH CONTROL FOR USE WITHOUT A**  
 11 **PRESCRIPTION.**

12 (a) IN GENERAL.—Any retailer that stocks oral birth  
 13 control for routine, daily use that is approved by, or other-  
 14 wise legally marketed under regulation by, the Food and  
 15 Drug Administration for use without a prescription may  
 16 not interfere with an individual's access to or purchase  
 17 of such birth control or access to medically accurate, com-  
 18 prehensive information about such birth control.

19 (b) LIMITATION.—Nothing in this section shall pro-  
 20 hibit a retailer that stocks oral birth control for routine,  
 21 daily use from refusing to provide an individual with such  
 22 oral birth control that is approved by, or otherwise legally  
 23 marketed under regulation by, the Food and Drug Admin-

1. Information if the individual is unable to pay for the birth
2. Control, directly or through insurance coverage.

